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DOMINICAN REPUBLIC: Divorce Law

by Armando E. González

1986

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by Armando E. González

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DOMINICAN REPUBLIC

Divorce Law

Introduction

Relatively uncomplicated and available divorces abroad have been a commonplace experience for an increasing number of Americans. When Mexico enacted the Decree of Feb. 8, 1971, [1] requiring aliens to prove their legal domicile in the country before filing legal actions, such as divorce petitions, the Dominican Republic--and also Haiti--were prompted to amend their respective laws to facilitate the divorce of aliens. The following study therefore is a summary of the legislation on divorce in the Dominican Republic.

The approach chosen is that of content analysis of the basic statutory source. It will, therefore, focus on the law's basic principles in substance and procedure and will not attempt a comparative law or conflict of laws analysis.

Preliminary Considerations

The basic law on divorce in force in the Dominican Republic is Law No. 1306-bis of May 21, 1937, [2] which repealed the previous 1935 law. [3] In turn, Law No. 1306-bis has been amended by other statutes, the most important

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[1] Diario Oficial, Feb. 20, 1971.

[2] Gaceta Oficial (G.O.) No. 5034 June 12, 1937.

[3] Law No. 843 of Feb. 19, 1935, G.O., Feb. 20, 1935.

of which for the purposes of this study is Law No. 142 of June 4, 1971 4/ which greatly facilitated divorce for Dominicans residing abroad as well as for foreigners who are in the country, even if they are not legal residents, when they file their divorce petitions on grounds of mutual consent.

Concerning the enforcement of the laws or of any amendatory statutes in the Dominican Republic, one should note that article 2 of the Civil Code 5/ states that "the law provides for the future; it does not have retroactive effects."

Under Dominican law, a marriage is dissolved by the death of one of the spouses or by divorce. There is an exception in the law which states that, in harmony with the essential properties of Catholic marriage, the spouses are understood to have renounced their rights to ask for a divorce by the mere fact of having contracted a Catholic marriage. Because of this, the civil tribunals are not empowered to pass judgments on matters of divorce vis-a-vis canon law marriages. These provisions were made applicable to Catholic marriages contracted after August 6, 1954. 6/

The Supreme Court has issued two important decisions with regard to this exception. These decisions state that since, under article 8 of the Constitution of the Republic, it is necessary to acknowledge the right of individuals to contract marriage and to dissolve it by divorce, the provisions of Law No. 3932 of 1954, which prohibits the courts from applying the

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4/ G.O., June 9, 1971.

5/ Código Civil de la República Dominicana (C. Civ.) (ed. of., Santo Domingo, Publicaciones ONAP, 1984).

6/ Law No. 1306-bis, art. 1.

divorce law when the spouses have contracted a Catholic marriage, are ipso jure null and void, as provided by Article 46 of the Constitution which states that any law that violates the Constitution is void. 7/

A divorce may be granted on any one of eight grounds including mutual consent, incompatibility of character, adultery, cruelty, and voluntary abandonment. 8/ Divorces granted on grounds of mutual consent are distinguished from divorces granted on other grounds in terms of procedure and because the former are nonappealable. 9/

Divorce by Mutual Consent

The mutual and constant consent of the spouses to divorce as expressed in the manner provided for in the law justifies that life in common is unbearable to them. 10/ A divorce petition on grounds of mutual consent, however, is not admissible in court until after two years of marriage. The petition is also not admissible if the parties have been married for 30 years, or when the husband is at least 60 years of age and the wife 50. 11/

Aliens who are in the Dominican Republic, although not residents, may divorce by mutual consent provided that at least one of them is present at the court hearing and the other is represented by proxy in the form of a holder of a special power of attorney. The law provides that the restrictions on the filing of the petition under article 27 are not applicable to aliens. 12/

7/ 797 Boletín Judicial (B.J.) 612 (1976); 809 B.J. 743 (1976).

8/ Law No. 1306-bis, art. 2.

9/ Id. art. 32.

10/ Id. art. 26.

11/ Id. art. 27.

12/ Id. art. 28, para. V.

Before presenting their divorce petition, the parties must execute a formal document stipulating who will have custody of the children and how much support the wife will be paid during the proceedings. The document must contain an inventory of all their property and specify where the wife will reside during the proceedings. 13/ The spouses are required to deposit documents concerning the divorce action with the court clerk. 14/

In cases of Dominican spouses residing abroad, the stipulations may be prepared through an attorney and signed before a notary public of the jurisdiction indicated in the act of executing the power of attorney. In their stipulations, the parties must expressly concede that a judge in the same jurisdiction indicated by them in the power of attorney has the authority to hear and decide the divorce. 15/ Aliens filing for divorce in the Dominican Republic must also expressly agree to the authority of a judge of first instance to hear and decide the case. They must execute the agreement before a notary public of the same jurisdiction as the court designated by them. 16/

Once these formalities have been complied with, the parties, either in person or represented by attorneys, must present the stipulations along with a copy of the marriage certificate and the birth certificates of any

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13/ Law No. 1306-bis, art. 28.

14/ Id. art. 33.

15/ Id. art. 28, para. IV.

16/ Id. art. 28, para. V.

children born during the marriage to the judge hearing the case. The parties must state their intention to divorce on grounds of mutual consent and ask the court to formally resolve that they may file the divorce petition. 17/ The judge will then enter the parties' statements into the records of the case. 18/

After ascertaining that all the legal requirements for the admission of the divorce petition have been met, the judge will admit it and set a hearing date within 60 days but not sooner than 30 days. A divorce decree will be issued eight days after the hearing. 19/

The decree must comply with the parties' stipulations. The stipulations may be altered only by the spouses themselves during the hearing, by previous mutual consent. 20/ In cases involving aliens, the judge will admit the petition and set a hearing date within three days. At the conclusion of the hearing, the judge will request that the government attorney issue a report on the case within the next three working days. The judge will then issue his decision within the following three days. 21/

17/ Law No. 1306-bis, art. 28, paras. II-III.

18/ Id. art. 29.

19/ Id. art. 30.

20/ Id. art. 30, para. I.

21/ Id. art. 30, para. II.

Either or both of the spouses are responsible for presenting the divorce decree in the Office of the Civil Status for registration and pronouncement 22/ within eight working days after its issuance. Upon presentation of a certified copy of the decree, aliens may have the divorce pronounced in any office in the same jurisdiction as the court which heard the case. The dispositive part of the decree must be published in a newspaper with national circulation. 23/ A divorce decree issued on grounds of mutual consent is nonappealable. 24/

In cases involving either Dominicans residing abroad or aliens filing for divorce in the Dominican Republic, a 50-peso tax stamp must be affixed to the summation briefs filed by the parties. 25/ Court clerks are not to furnish interested parties in these cases with copies of the divorce decree unless the clerk has received proof that the foreign currency necessary to meet the economic obligations incurred by the parties for the judicial proceedings has been deposited with the Central Bank of the Dominican Republic. Violations of this provision are punishable by the dismissal of the officials in question. 26/

22/ "Pronouncement" is not defined or described in statutory sources. Indirect references to this formality suggest that it consists of a verbal statement made by the Official of the Civil Registry. Apparently, no specific words or ritualistic formulations are required, although a direct reference to the legal dissolution of the marriage would probably be considered necessary for the pronouncement to be effective.

23/ Law No. 1306-bis, art. 31.

24/ Id. art. 32.

25/ Law No. 142, art. 4 and Law No. 136 of June 21, 1983, G. O., June 30, 1983.

26/ Law No. 174 of June 16, 1971, G.O., July 24, 1971.

Divorce on Other Grounds

Aliens may also file divorce proceedings in the Dominican Republic on grounds other than mutual consent. If this is done and the courts obtain jurisdiction to hear the case, the applicable rules of court in the proceedings are those provided under articles 3 through 20 of the divorce law. The disadvantage is that the alien loses any right to the speedy proceedings he or she may be able to obtain when the grounds for divorce are based solely on the mutual consent of the spouses.

A divorce petition on grounds other than mutual consent must be filed before the court of first instance of the judicial district where the defendant resides, should he or she have a known place of residence in the Republic; or, before the court of the plaintiff's place of residence, in the opposite case. 27/

The defendant is summoned by means of ordinary summons to appear in person, or by means of an attorney, at a hearing in closed chambers on the date and at the time set by the court. A copy of the complaint and all the supporting documents, including a list of witnesses, must be given to the defendant at the time of summoning. Every divorce petition must summarily contain, under penalty of nullity, a petition from the plaintiff concerning the custody of children or a statement of the parties' agreement in this regard. A woman does not require any kind of authorization to file a divorce petition. 28/

27/ Law No. 1306-bis, art. 3.

28/ Id. art. 4.

In the event that any of the facts alleged by a plaintiff in the divorce petition causes the government attorney to initiate criminal proceedings against the defendant, the divorce proceedings will be suspended until the case has been adjudicated. 29/

After the term for the summons has elapsed, regardless of whether the defendant appears in court, the plaintiff or his or her attorney must state the grounds for the complaint to the court and offer supporting documents. He or she will examine any witnesses and conclude by asking the court to grant the petition. 30/ If the defendant is either present at the hearing or represented by an attorney, he or she may make a statement about the grounds alleged in the petition or about the plaintiff's documents or witnesses. The defendant is also entitled to go through the procedural formalities for presenting and calling witnesses if a list of these witnesses had been forwarded to the plaintiff at least two working days before the hearing. The plaintiff may state objections to the defendant's witnesses. 31/

Objections to witnesses are decided during the hearing, without the judge leaving the chamber. Relatives of the parties, with the exception of their children and descendants, and the servants of the spouses may not be objected to as witnesses. 32/

The court clerk must state in the record that the parties appeared in court. The record must also show their statements, remarks, the deposition of the witnesses, and any objections to the witnesses that may have occurred.

29/ Law No. 1306-bis, art. 5.

30/ Id. art. 6.

31/ Id. art. 7.

32/ Id. art. 9.

This record is then read to the parties who are asked to sign it. The record must either state that the parties signed it or contain their statements that they cannot or do not wish to sign it. 33/ The judge, if he deems it necessary, may order a hearing to provide additional evidence in the case. 34/

After the hearing, the records of the case are forwarded to the government attorney for an opinion which must be issued within five working days. 35/ The court will then issue a decree granting or denying the divorce. 36/

A divorce decree on grounds other than mutual consent must specify which spouse is granted custody of the children. The judge is required to abide by whatever the parties have agreed upon; however, in the absence of any agreement before the filing of the divorce petition or during the proceedings, certain rules apply. By law, all children up to four years of age remain under the care and custody of their mother, provided that the divorce decree was not issued against her under certain grounds authorized by of article 2 of Law No. 1306-bis. Children over four years of age remain in the custody of the father who obtained the divorce, unless the tribunal, acting in the best interests of the children and upon petition of the mother or an interested party, orders that the children be entrusted to the mother or to a

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33/ Law No. 1306-bis, art. 8.

34/ Id. art. 11.

35/ Id. art. 10.

36/ Id. art. 12.

third party. Regardless of which parent has custody of the children, the parents maintain their obligation to support and educate them as well as to proportionally share these expenses in relation to their income. 37/

All divorce decrees issued on grounds other than mutual consent are considered as issued in contentious proceedings, regardless of whether or not the defendant appeared in court, and therefore they may be appealed. Appeals are heard and decided by the respective court of appeals in summary proceedings. 38/ The term for appeal is two months. 39/

When a spouse files a divorce petition based on the ground that the other spouse was sentenced to a criminal penalty, the only formality the petitioner must observe is that of filing a formal copy of the sentence issued against the defendant with the court, together with a certificate issued by the clerk of the sentencing court attesting to the fact that the sentence cannot be amended by any ordinary legal means. The certificate issued by the court clerk must be countersigned by the prosecutor (procurador fiscal) assigned to the tribunal or by the Republic's attorney general. 40/

A person obtaining a final divorce decree must appear before the official of the Office of the Civil Status for registration and pronouncement of the decree within two months of the date the decree became final unless an appeal for nullity (cassation) has been filed. There may be no pronouncement of the divorce or registration of the decree unless the formalities required by article 548 of the Code of Civil Procedure have been complied with and

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37/ Law No. 1306-bis, art. 12, para. I.

38/ Id. art. 15.

39/ Id. art. 16.

40/ Id. art. 13.

evidence has been presented that the other party has been summoned to hear the pronouncement. The issuance of a certificate showing the date on which notice of the judgment was given to the defendant in his or her domicile as well as a certificate from the court clerk stating there are no appeals pending against the judgment are required. An official who pronounces a divorce without complying with these formalities is subject to dismissal from his position, independently of the civil liability that may exist. 41/

The two-month term does not begin to run until after the expiration of the time to appeal when the divorce decree was issued by the court of first instance. When the decree was issued on appeal by default, the time begins to run after the expiration of the term to oppose the appeal. 42/ The plaintiff's failure to register the divorce decree within the term of two months will render it unenforceable. In this case, reestablishment of a divorce action will require new grounds to which the previous grounds may be added. 43/ If one of the spouses dies before these legal formalities are complied with, the decree becomes unenforceable. 44/

Article 3 of the Civil Code requires all Dominicans, even if they reside abroad, to obey the laws related to the civil status and legal capacity of individuals. Therefore, in order for a divorce decree issued abroad to be acknowledged in the Dominican Republic, the grounds alleged in

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41/ Law No. 1306-bis, art. 17. See also Código de Procedimiento Civil de la República Dominicana (C. Pro. Civ.) art. 548. (ed. of., Santo Domingo, 1984).

42/ Law No. 1306-bis, art. 18.

43/ Id. art. 19.

44/ Id. art. 20.

the case must also be recognized as grounds for divorce in the Dominican Republic. 45/ Likewise, a foreign divorce decree issued abroad becomes enforceable in the Dominican Republic only after the decree has been pronounced by the official of the Civil Registry. Divorce decrees issue abroad are also entered in the Registry. 46/

Effects of Pronouncement

The dispositive part of a divorce decree issued on specific grounds must be published in a local newspaper within eight days after the divorce is pronounced. A copy of the newspaper must be deposited with the court clerk within eight days following the publication. Failure to comply results in a fine of 100 pesos to be imposed against the spouse who obtained the divorce decree, without prejudice for the civil liability which he or she may incur for his or her negligence. However, the validity of the divorce decree is not affected. If the locality where the divorce petition was admitted does not have a newspaper, publication may be made in a newspaper of the nearest province or community. If the divorce was admitted on grounds of mutual consent, these obligations are understood to be extended to both spouses, under the penalty of the fine described above. In addition there is a further requirement that the concluding arguments must bear an Internal Revenue stamp of 25 pesos before the judge can issue a decision. 47/

A 1978 decision of the Dominican Supreme Court stated that the divorce of the spouses does not arise out of the divorce decree that authorizes the spouses to divorce. Rather, the decree is only part of the proceedings

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45/ Kaplan, Russin, Vecchi & Heredia-Bonetti, Compendio de la Legislación de la República Dominicana en Materia de Comercio 472 (Fondo Editorial del Instituto de Estudios Superiors, 1982).

46/ Law No. 659 of July 17, 1944, art. 66, G. O., Jul. 21, 1944.

47/ Law No. 1306-bis, art. 42.

which are necessarily completed with the act of pronouncement of the divorce by the official of the Civil Status. Until that time, the marriage bonds between the spouses retain their full legal effects. 48/

With regard to notification of the issuance of a divorce decree, the Supreme Court has stated that noncompliance with the legal formalities on notification of judgments is punishable not only with the nullity of the formalities existing before the moment the divorce decree was issued, but also with regard to those that follow the issuance of the decree. Therefore, if notification by the bailiff is served to another person and the wife does not appear in person, the ensuing pronouncement of the divorce decree is null and void. 49/ Judicial standards have also been established with regard to notice of appeals. 50/

Effects of Divorce Decree

Divorced spouses who remarry each other cannot adopt a legal scheme governing their marriage property which is different from the one they previously had. 51/ A divorced woman cannot remarry for ten months after the divorce decree becomes final, unless she is remarrying her former husband. 52/ A husband against whom a divorce decree was issued on any of the grounds mentioned in subsections (d) through (h) of article 2 of Law No. 1306-bis will lose all special benefits granted to him by his wife, either under the marriage contract or during the marriage. 53/ Finally, the successful

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48/ 809 B.J. 827 (1976).

49/ 737 B.J. 918 (1972).

50/ See 764 B.J. 1853 (1974); 825 B.J. 1500 (1979).

51/ Law No. 1306-bis, art. 34.

52/ Id. art. 35.

53/ Id. art. 36.

plaintiff must retain the benefits granted to him or to her by the other spouse, even if it was stipulated that these benefits be reciprocal and this reciprocity does not take place. 54/

An action on divorce will be extinguished by the reconciliation of the spouses if it happens either after the facts that caused the legal action or after the filing of the divorce petition. 55/ This notwithstanding, the plaintiff may file a new petition for divorce on grounds arising after the reconciliation, in which case he or she may use the previous grounds in support of the new divorce petition. 56/ In the event the plaintiff denies that a reconciliation existed, the defendant must prove it. 57/

All proceedings provided for under this law must be observed under penalty of nullity. The terms for actions provided in the law are always understood to refer to working days. 58/ It must be taken into account that the nullity referred to here and throughout this law must be a final court-issued decree of nullity.

Special Features

Provisional measures that may be ordered by the courts in divorce cases include the entrusting of the temporary administration of any children's property to the father unless the court provides otherwise upon the petition of legitimate parties. 59/

54/ Law No. 1306-bis, art. 37.

55/ Id. art. 38.

56/ Id. art. 39.

57/ Id. art. 40.

58/ Id. art. 41.

59/ Id. art. 21.

As soon as any action in divorce proceedings takes place, the provisions of article 108 of the Civil Code, making a married woman's domicile that of her husband's, cease to apply. The wife may leave her husband's residence during divorce proceedings and request support in an amount that is proportionate to her husband's income. [60]/

All notifications must be served, under penalty of nullity, to her in person or to the assigned government attorney. In all cases in which the summonses have to be served with the government attorney, the plaintiff husband must have a notice published in a national newspaper with major circulation in Ciudad Trujillo [61]/ during three consecutive days. A copy of this notice must be furnished to the government attorney with the divorce petition. The presiding judge will not admit the divorce petition if copies of the three successive issues of the newspaper, duly certified by the printers, are not deposited in court as proof of the publication of notice. [62]/

A wife having common property with her husband may request, at any time after the filing of the divorce petition, that the personal property belonging to the community be sealed by the court for the preservation of her rights. The seals will not be removed until an inventory and valuation are made. [63]/ Any obligation of the marriage community or transfer of common real property made by the husband after the date of the filing of the divorce petition will be voidable if it is proved that the wife was defrauded by it. [64]/

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[60]/ Law No. 1306-bis, art 22.

[61]/ This city is presently known as Santo Domingo de Guzmán.

[62]/ Law No. 1306-bis, art. 22.

[63]/ Id. art. 24.

[64]/ Id. art. 6.

Law of Civil Status

Since divorce actions are among those which affect one's civil status and entail certain formalities, such as registration and a pronouncement of the divorce decree, a discussion of the provisions of the law on civil status relevant to divorce is in order.

Under the law, officials of the Office of the Civil Status receive information and documentation concerning the civil status of persons. They are also entrusted with the custody and preservation of the registries and related documents. The officials issue copies and summaries of the records concerning civil status as well as any document filed within their archives or certificates concerning facts in the civil status records.[65] They are required to carry two original records of the registries of births, marriages, divorces, and deaths. [66] Anyone is entitled to request copies of the records in the Office of the Civil Status. These copies must be taken as valid, provided that the original records were registered within the legal terms. [67]

Facts related to the civil status of Dominicans abroad will be validated in the Dominican Republic by the diplomatic and consular agents of the Republic provided these acts were carried out in observance of the law in that country. [68]

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[65] Law No. 659, art. 6.

[66] Id. art. 10.

[67] Id. art. 31.

[68] Id. art. 34.

Final divorce decrees which have been properly pronounced and final judgments granting exequatur status to foreign divorce, dissolution, or nullity decrees are annotated in the margin of the corresponding marriage record. 69/

Concluding Remarks

In summary, the law on divorce of the Dominican Republic grants standing to aliens to petition its courts for divorce to dissolve a marriage entered into abroad. This may be the case of American citizens married in the United States or elsewhere.

If the divorce petitioned is grounded on the mutual consent of the spouses, the law requires basically that one of the spouses be present for the proceedings and the other be represented by a proxy; that they submit themselves to the court; that a local attorney be designated; that the spouses execute a formal document stipulating their agreement on support and custody of the children, if any, an inventory of the property concerned, and a statement regarding the residence of the wife before the petition is filed in court; that the 25-peso tax stamp on the summation briefs submitted be paid; and, that there is evidence of a deposit for an amount covering judicial costs before copies of the judicial decree of divorce may be issued. Proceedings for divorce on this ground are reasonably fast and uncomplicated; however, no appeal of the decree is allowed. Once these proceedings are completed, the registration and pronouncement of the divorce decree in the Office of the Civil Status must follow.

69/ Law No. 659, art. 63.

Aliens may also litigate for divorce on grounds other than mutual consent as prescribed by the law. The rules of court applicable to this type of proceeding are characterized by the existence of the plaintiff who files for divorce and the defendant who may or may not appear in court and likewise, who may or may not oppose the proceedings. This type of proceeding requires that evidence be introduced in the case and be evaluated by the court in order to reach a decision, which in turn, may be appealable. A final decision granting a divorce decree must be registered and pronounced in the Office of the Civil Status within two months after it became final. Foreign defendants residing abroad may avail themselves of these proceedings. However, they must be legally summoned to appear in court and may raise the issue of the jurisdiction of the court to hear the case should this be convenient to the defense of their cases.

Finally, special attention must be given to the fact that in order to legally prove that a valid divorce decree has been obtained in the Dominican Republic a certificate of the registration and pronouncement of the decree issued by the official of the Civil Status should be obtained.

APPENDIXES

Translator's Note: - The following appendixes contain the laws or portions of codes applicable to the main text. As much as possible the language and structure used in the original Spanish text have been retained. Words appearing in brackets have been inserted by the translator for purposes of clarity.

APPENDIX I

LAW ON DIVORCE NO. 1306-BIS OF MAY 21, 1937 1/

Chapter I

Art. 1. 2/ Marriage is dissolved by the death of one of the spouses or by divorce.

Paragraph I. This notwithstanding, in harmony with the essential properties of Catholic marriage, it is understood that, by the mere fact of contracting a Catholic marriage the spouses renounce their rights to ask for a divorce. For these reasons, the civil tribunals are not empowered to pass judgments on matters of divorce of canon law marriages.

1/ Gaceta Oficial (G.O.), June 12, 1937.

2/ Amended by Law No. 3923 of Sept. 20, 1954, G.O., Sept. 25, 1954.

Paragraph II. The provisions of the previous paragraph shall be applicable to Catholic marriages contracted after August 6, 1954, date of the exchange of ratifications of the Concordat subscribed between the Dominican Republic and the Holy See on June 16, 1954, all this, in conformity with the provisions of article 28, paragraph 1 of that instrument.

Chapter II

Grounds for Divorce

Art. 2. 3/ The following constitute grounds for divorce:

(a) Mutual consent by the spouses.

(b) Incompatibility of character as evidenced by facts the magnitude of which as grounds of unhappiness of the spouses and as a cause of social disturbance sufficient to motivate a divorce shall be evaluated by the judges.

(c) Repealed. 4/

(d) A [formal] declaration of absence as decreed by a court of law pursuant to the provisions of Chapter II, Title IV, Book I of the Civil Code.

(e) Adultery by either of the spouses.

(f) The sentencing of either of the spouses to a criminal penalty.

Paragraph: A divorce petition cannot be filed on this ground if the sentence imposed is for political offenses.

3/ Amended by Law No. 2669 of Dec. 31, 1950, G.O., Jan. 10, 1951.

4/ Subsection (c), concerning a spouse's desire not to have children as a ground for divorce, was repealed by Law No. 3020 of July 31, 1951, G.O., Aug. 8, 1951.

(g) Cruel treatment or grave [physical or mental] injuries inflicted by one spouse against the other.

(h) The voluntary abandonment by one of the spouses of the conjugal home, provided that he or she does not return within the term of two years. The term will begin to be counted as of the date of the legal notification executed on the spouse who abandoned the conjugal home by the other spouse.

(i) Habitual drunkenness by one of the spouses or the habitual or immoderate use of narcotic drugs.

Art. 2. (Transitory provision).5/ Since no procreation of children as grounds for divorce has been eliminated in the Dominican Republic, it is understood that divorce petitions filed under the provisions of Law No. 1306-bis of May 21, 1937, shall be admitted when the summons to the parties were recorded prior to the date of publication of Law No. 2669 of December 31, 1950.

Chapter III

First Section

Divorce Proceedings on Specific Grounds

Art. 3. A divorce petition on specific grounds must be filed before the tribunal or court of first instance of the judicial district where the defendant resides, should he or she have a known place of residence in the Republic; or before [the tribunal or court of the] plaintiff's place of residence in the opposite case.

5/ Article 2 (transitory provision) of Law No. 2669 of Dec. 31, 1950, as amended by Law No. 3020 of July 31, 1951, G.O., Aug. 8, 1951.

Art. 4. The plaintiff shall summon the defendant by means of ordinary summons proceedings, in order that he or she may appear in person or by means of a duly empowered attorney in fact, at a hearing which shall take place in private chamber on the date and at the time set by the court; a copy of the document submitted to the court by the plaintiff and documents supporting his or her petition shall be handed to the defendant at the time of his or her summoning, should there be any.

Paragraph I. Together with his or her divorce petition, the plaintiff must furnish the defendant with the list of witnesses he or she intends to examine in the same hearing.

Paragraph II. Every divorce petition shall summarily contain, under penalty of nullity, a petition concerning the custody of the children by the plaintiff, or it shall state whatever the parties have agreed upon on this matter.

Paragraph III. The wife does not require any kind of authorization to file a divorce petition.

Art. 5. In the event that any of the facts alleged by the plaintiff in his or her divorce petition causes the government attorney to initiate criminal proceedings against the defendant, the divorce proceedings shall be suspended until the criminal courts have finally resolved the issue.

Art. 6. After the term granted to the defendant to appear in court has elapsed, regardless of the fact that he or she appears in court, the plaintiff himself or herself, or by means of his or her attorney in fact, shall state the reasons for his or her petition to the court and offer the documents which support it. He or she shall examine the witnesses, should there be any, and shall conclude by asking the court to grant his or her petition.

Art. 7. If the defendant is present at the hearing, either in person or represented by his or her attorney in fact, he or she may state his or her comments about the reasons alleged in the petition, about the documents brought by plaintiff, or about the witnesses heard upon petition of the latter. The defendant may also offer in the same hearing witness depositions of the witnesses he or she intends to use. The plaintiff may also state his or her objections to these witnesses. The defendant does not have the right to have his or her witnesses examined if he or she has not forwarded a list of witnesses to the plaintiff no less than two working days before the day set for the hearing.

Art. 8. The court clerk shall state in the records that the parties appeared [in court], including their statements and observations as well as their depositions, the depositions by witnesses, and the challenges to the witnesses that may have occurred. This record shall be read to the parties who shall be asked to sign it. The act shall state that the parties signed it or it shall contain their statements that they cannot sign or that they do not wish to sign the record. The witnesses shall sign the record at the end of their respective depositions, after it has been read and approved. In the event that they cannot or do not wish to sign, the record shall state these circumstances.

Art. 9. Challenges to witnesses shall be decided during the hearing, without the judge leaving the chamber. Concerning everything related to witnesses' depositions in divorce matters, the rules which appear under articles 282 and those that follow of the Code of Civil Procedure 6/ shall be complied with, provided that they are not opposed by special provisions of this law.

Paragraph. Witnesses who are relatives of the parties are not to be challenged, with the exception of their children and descendants; neither may the servants of the spouses, for this reason, be challenged.

Art. 10. After the hearing is concluded, the court shall order that the records of the case be forwarded to the government attorney in order that he may issue his opinion within the term of five working days.

Art. 11. Before ordering that the records of the case be forwarded to the government attorney, the judge may order the practice of hearings as provided under the Code of Civil Procedure, if he deems it necessary and if the evidence presented in support of the divorce petition is not convincing.

Paragraph. In cases when the judge orders the hearings, the court clerk shall furnish a copy of the judge's order to the plaintiff with sufficient time so that the latter notifies the defendant and the list of witnesses whose names appear in the court order. The plaintiff may have his or her witnesses whose names appear in the list properly summoned.

Art. 12. After the government attorney has returned the records of the case with his opinion, the tribunal shall issue a decree granting or denying the divorce. This decision shall be publicly pronounced.

6/ Articles 282 et seq. of the Code of Civil Procedure have been superseded by articles 60 through 72 of Law No. 834 of July 15, 1978. The new provisions may be found in Código de Procedimiento Civil, app. 8 at 247 (Santo Domingo, 1980).

Paragraph. Every divorce decree on specific grounds shall order under whose spouse shall be vested the custody of the common children. The judge in the first place shall abide by whatever the parties have agreed upon; however, in the absence of any agreement prior to the filing of the divorce petition or during the proceedings, he shall abide by the following rules:

(a) All children up to four years of age shall remain under the care and custody of their mother, provided that the divorce decree was not issued against her under any of sections (e), (f), and (i) of article 2 of this law.

(b) Children over four years of age shall remain under the custody of the husband who obtained the divorce, unless the tribunal, either upon petition of the other spouse, or of any member of the family, or from the government attorney, and for the benefit of the children, orders that all of them be entrusted either to the other spouse or to a third party.

Paragraph II. Regardless who the person is who is vested with the custody of the children, the parents maintain their rights to support them and to educate them and they are under the obligation of proportionally sharing these expenses, in relation to their income.

Art. 13. In those cases where the divorce petition is based on grounds that one of the spouses was sentenced to a criminal penalty, the only formality to be observed shall be that of filing a formal copy of the sentence issued against the defendant spouse with the tribunal, together with a certificate issued by the clerk of the sentencing tribunal attesting to the fact that the sentence cannot be amended by any ordinary legal means. The certificate issued by the court clerk shall be endorsed by the fiscal procurator of his tribunal or by the Republic's attorney general.

Art. 14. Repealed. 7/

Art. 15. All divorce decrees issued on specific grounds shall be considered as issued in contentious proceedings, regardless of whether or not the defendant appeared in court, and they may be appealed. The appeal shall be heard and decided by the respective Court of Appeals, in summary proceedings.

Art. 16. An appeal is not admissible unless it is attempted within the term of two months counting from the date of notification of the divorce decree to the appellant.

Art. 17. 8/ The spouse who obtained a divorce judgment that is a final judgment of a court of last instance is under the obligation to appear before the official of the Office of the Civil Status within 2 months unless an appeal on cassation has been filed which suspends the effects of the judgment. The divorce is then pronounced and the judgment registered in the Office of the Civil Status, provided the other party is summoned by the bailiff so that he or she may appear before the official of the Civil Status to hear the pronouncement of the divorce.

In the transcription of the dispositive part of the divorce judgment there shall be added the date, number [of the case] should it have any, and the court that issued the decree.

Paragraph. The official of the Civil Status shall not pronounce the divorce nor transcribe the dispositive part of the divorce decree unless the formalities provided for in article 548 of the Code of Civil Procedure have been complied with and evidence that the other party was summoned to appear to hear the pronouncement as provided in this article has been presented. The

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7/ This article, concerning divorces on grounds of nonprocreation of children, was repealed by Law No. 2669 of Dec. 31, 1950, G.O., Jan. 10, 1951.

8/ Amended by Law No. 498 of Oct. 28, 1969, art. 4, G.O., Nov. 8, 1969.

official of the Civil Status who pronounces a divorce without complying with the above mentioned provisions shall be subject to dismissal [from his position] independently of the civil liability that may exist.

Art. 18. The term of two months referred to in the previous article shall not start until after the expiration of the term to appeal in those cases where the divorce decree has been issued by the court of first instance. With regard to those decrees [of divorce] issued in default when the appellant [does not appear] in the appeal proceedings, the term shall be counted after the expiration of the term to oppose the appeal.

Art. 19. The plaintiff who fails to act within the term of two months provided for under article 17 shall lose the benefits granted to him or to her by the decree thus obtained, and he or she shall not be able to obtain a new decree, unless the petition is based on new grounds. The previously alleged grounds may be added to the new ones.

Art. 20. A divorce decree shall be considered as not issued or as extinguished, if, before complying with the formalities of the law, one of the spouses dies.

Second Section

Provisional Measures That May Arise out of Divorce Petitions

Art. 21. The provisional administration [of the property] of the children shall be entrusted to the plaintiff or defendant husband unless the tribunal provides otherwise upon petition either of the [children's] mother, the family, or the government attorney, and for the benefit of the children.

Art. 22. As soon as any act or diligence in divorce proceedings takes place, the provisions of article 108 of the Civil Code, which state that a married woman's domicile is that of her husband, shall cease to have legal effects. The wife may leave her husband's place of residence during divorce proceedings and she may request support in an amount that is proportionate to her husband's income. The tribunal shall indicate the place where the wife is obligated to reside and it shall set, if pertinent, an amount for support that the husband will be obligated to pay. All the notifications, including any other preliminary notifications intended to establish evidence of the abandonment of the conjugal home by the wife, or of any other fact concerning the divorce, shall be made, under penalty of total and absolute nullity, to her in person or to the government attorney [assigned] to the tribunal who shall hear the case. The latter shall undertake the necessary diligence in order that these notifications reach the wife.

Paragraph. 9/ In all those cases where summons have to be executed with the government attorney, it shall be mandatory for the plaintiff husband, under penalty of total and absolute nullity, to previously publish in a national newspaper of major circulation of Ciudad Trujillo, 10/ during three consecutive days, a notice to the defendant's wife stating that in the absence of information concerning her place of residence, she will be summoned to appear in court in divorce proceedings through the government attorney of the tribunal which shall hear the case. The notice shall state [the] tribunal, the date the divorce petition shall be [served] to the government attorney, the grounds alleged in the divorce petition, the plaintiff's name, the name of the wife against whom the petition is filed, the place of her

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9/ Added by Law No. 112 of Mar. 23, 1967, G.O., Mar. 31, 1967.

10/ Presently Santo Domingo de Guzman.

last residence known by the husband, and the day and time set for the hearings. A copy of this notice shall be furnished to the government attorney together with the divorce petition. The judge hearing the case shall declare the divorce petition as nonadmissible, if it is not proved to him that the above-mentioned notices have been published by means of depositing in court a copy of the three issues of the newspaper, containing the three successive publications ordered by this law, duly certified by the printers.

Art. 23. The wife shall be obligated to prove that she resides in the indicated place, every time she is required to do so. In the absence of this proof, the husband may refuse payment for her support, if he can prove that the wife has abandoned the indicated place of residence.

Art. 24. A plaintiff or defendant wife having common property with her husband during divorce proceedings may, at any time after the filing of the divorce petition, request, for the preservation of her rights, that the movable property belonging to the community be sealed by the court. The seals shall not be lifted until an evaluation and inventory is made, the husband being under the obligation to exhibit [in court] the items subject to inventory or to respond for their value as a judicial trustee.

Art. 25. Any obligation of the marriage community, any alienation of common real property executed by the husband after the date of the filing of the divorce petition shall be voidable, if it is proved that it was executed in violation of the rights of the wife.

Chapter IV

Concerning Divorce by Mutual Consent and [Legal] Proceedings to be Followed

Art. 26. The constant and mutual consent of the spouses, expressed in the manner provided for in this law, shall justify that life in common is unbearable to them.

Art. 27. A divorce petition on grounds of mutual consent shall not be admissible [in court] until after two years of marriage; neither shall it be admissible after 30 years of life in common, nor when the husband is at least 60 years of age and the wife 50.

Art. 28. Before presenting themselves before the judge who shall hear the case, the spouses are obligated to: (1) formalize an inventory of all their movable and real property; (2) agree on who shall be the one entrusted with the care of the children born of their union during the proceedings and after the pronouncement of the divorce; (3) agree on the house where the wife shall reside during the proceedings and the amount the husband will pay her for support while the terms run and a final divorce decree is obtained.

Paragraph I. All these conventions and stipulations must be executed in a formal [authentic] document.

Paragraph II. Once the above mentioned formalities have been complied with, the spouses, personally or represented by attorneys in fact with a formal power of attorney, along with the documents in which the stipulations referred to in the present article were complied with, a copy of the marriage certificate and the birth certificates of the children born during

the marriage, must appear before the judge of first instance of their domicile, stating that they intend to divorce themselves on grounds of mutual consent and to this effect they ask the court to formally resolve that they may file the divorce petition.

Paragraph III. In the absence of the birth certificates because the birth registrations do not appear in the records of the Office of the Civil Status, a notarial instrument shall be sufficiently valid.

Paragraph IV. [11]/ In the case of Dominican spouses residing abroad, the conventions and stipulations may be prepared through special attorneys in fact and signed by them before a notary public of the jurisdiction indicated in the act of executing the power of attorney. In the conventions and stipulations, the parties shall grant competence in an express manner, to a judge of first instance of the same jurisdiction indicated by them in the power of attorney to hear and decide about the divorce.

Paragraph V. [12]/ Aliens who are in the country although they are not residents may have themselves divorced by mutual consent, provided that while at least one of them is present at the hearing and the other represented by the holder of a special power of attorney, they expressly agree to attribute jurisdiction to a judge of first instance in the instrument of conventions and stipulations executed before a notary public of the same jurisdiction of the court designated by them. The provisions of article 27 of this law shall not be applicable to divorce petitions filed under this paragraph.

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[11]/ Added by Law No. 142 of June 4, 1971, art. 1, G.O., June 9, 1971.

[12]/ Id.

Art. 29. The judge, in view of the statements of the spouses, shall issue an act [13] validating the statements made.

Art. 30. After ascertaining that all the requirements set by the law for the admission of the divorce petition have been complied with, the judge shall admit it, setting a term of no less than 30 nor of more than 60 days in order that the spouses appear at a hearing; and after all of these requirements have been met, he shall issue a divorce decree eight days after the hearing.

Paragraph I. The divorce decree must comply with all the stipulations stated in the acts referred to under article 28. These acts may be altered only by the spouses themselves during the hearing with previous mutual consent to these effects.

Paragraph II. [14] In the cases provided for in article 28, paragraph V of this law, the judge shall admit the petition and set a date within three days in order that the spouses appear in court. At the conclusion of the hearing, the judge shall request that the government attorney issue a report on the case within the following three working days. The judge shall issue his decision within the following three days.

Art. 31. The spouses, or the more diligent of them, shall be under the obligation to transcribe in the Office of the Civil Status the divorce decree granting the divorce, and to have it pronounced. This shall be done eight working days after the issuance of the divorce decree.

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[13] An "act", as used in the original text, refers to an official written statement issued by the judge.

[14] Added by Law No. 142 of June 4, 1971, art. 2.

Paragraph I.[15/] In the case provided for under paragraph V of article 28 of this law, once the divorce decree has been issued, the divorce shall be pronounced by any official of the Civil Status of the jurisdiction of the court that heard the case, by means of the presentation of a certified copy of the decree previously transcribed in the Civil Registry. The dispositive part of the decree shall be published in a newspaper of national circulation.

Art. 32. The divorce decree that orders the divorce by mutual consent is nonappealable. It shall be executed in compliance with the provisions established in the Code of Civil Procedure taking into account the formalities provided for in this law.

Art. 33. The spouses are under the obligation to deposit with the court clerk the documents concerning the divorce action by mutual consent, as provided under article 28 [of this law].

Chapter V

Effects of the Divorce

Art. 34. Divorced spouses who marry again cannot adopt a regime [concerning marriage property] different from the one they previously had.

Art. 35. A divorced woman cannot remarry for ten months after the divorce decree becomes final, unless her new husband is the one from whom she divorced.

[15/] Added by Law No. 142 of June 4, 1971, art. 3.

Art. 36. [16/] The husband against whom a divorce decree was issued on any of the grounds mentioned in sections (e), (f), (g), (h) and (i) of article 2 of this law shall lose all the benefits granted to him by the other spouse, either under the marriage contract or during the marriage.

Art. 37. The spouse who obtained the divorce shall preserve the benefits granted to him or to her by the other spouse, even in the case they stipulated these benefits to be reciprocal and this reciprocity does not take place.

Chapter VI

Concerning the Exceptions of Nonadmission [of the Petition]

Art. 38. A divorce action shall be extinguished by the reconciliation of the spouses if it happens either after the facts that caused the [legal] action or after the filing of the divorce.

Art. 39. In either case, the court shall declare that the divorce petition is inadmissible. This notwithstanding, the plaintiff may file a new action for divorce on grounds occurring after the reconciliation in which case he or she may use the previous grounds in support of the new divorce petition.

Art. 40. In the event that the plaintiff denies that a reconciliation existed, the defendant may prove it either by written evidence or by means of witnesses in the manner provided under article 7 and those following it.

Art. 41. The proceedings provided for under this law shall be observed under penalty of nullity; the terms provided in this law shall be always understood to refer to working days.

16/ Amended by Law No. 2669 of Dec. 31, 1950.

Chapter VII

Art. 42. The dispositive part of divorce decrees issued on specific grounds shall be published in one of the newspapers of the locality within the term of eight days after the divorce was pronounced. The publication shall include a notice that the divorce decree was pronounced. A copy of the newspaper shall be deposited with the court clerk within the term of eight days following that of the publication, under penalty of a fine of 100 pesos without prejudice for the civil liability he or she may incur for his or her negligence. If the locality that admitted the divorce does not have a newspaper, publication of the dispositive part of the divorce decree shall be made in a newspaper of the province or community nearest to it.

Paragraph I. When a divorce has been decreed on grounds of mutual consent, the obligations imposed in this article shall be understood to be extended to both spouses, under the penalty mentioned.

Paragraph II. 17/ The conclusions of the hearing in all cases concerning divorce will bear a 25-peso Internal Revenue Stamp without which the presiding judge cannot issue his or her decision.

Art. 43. Law Number 843 on divorce, promulgated on February 19, 1935, is hereby repealed.

17/ Added by Law No. 136 of June 21, 1983, art. 1, G. O., June 30, 1983.

APPENDIX II

Excerpts

LAW NO. 659 OF JULY 17, 1944 1/ ON THE CIVIL REGISTRY

Title I

Concerning the Offices and Officials of the Civil Status

Art. 1. In the National District, in each municipality, and in the municipal district there shall be one or more Offices of the Civil Status in charge of officials of the Civil Status...

...

Art. 6. It is within the functions of the officials of the Civil Status:

(a) To receive information and to document the records concerning the civil status of persons;

(b) The custody and preservation of the registries and any other document related to them;

(c) To issue copies of the records concerning the civil status of persons and of any document filed within their archives;

(d) To issue short version copies and certificates concerning the records of the civil status of persons.

1/ Gaceta Oficial (G.O.) July 21, 1944.

Art. 7. The director of the central Office of the Civil Status in charge of one of the original registries to be carried by the officials of the Civil Status as provided under article 10 of this law may issue short version copies, certificates, and copies of the records that appear in the registry.

Art. 8. In foreign countries, the functions of the Official of the Civil Status shall be performed by the diplomatic agents and consuls; on warships, by the commissars or by whoever performs their functions; and on merchant vessels, by their captains or masters.

...

Title II

Concerning the Registries and Acts of the Civil Status

Art. 10. The officials of the Civil Status are under the obligations of carrying two original records of the following registries: births, marriages, divorce and deaths.

...

Art. 24. The records of the Civil Status shall indicate the year, month, day, and time of the registration, the names and surnames, and domicile including the number and stamps appearing in the personal identification document of the witnesses and persons who do the registration.

The date and place of birth shall be mentioned, if they are known:

(a) of the parents of the child in the records of births and of acknowledgments;

(b) of the child in the records of acknowledgment;

(c) of the spouses in the records of marriages;

(d) of the deceased in the records of deaths.

In the contrary case, it shall be sufficient to indicate their ages.

Likewise, it shall be sufficient to indicate the ages of the persons who do the registration.

Concerning the witnesses, there shall be indicated only whether they are of legal age.

Art. 31. Any person is entitled to request copies of the records registered in the Office of the Civil Status. These copies, issued in accordance to what is stated in the registries that are legalized by the president of the court of first instance of the jurisdiction or by the person who performs his duties, shall be taken as valid (fehacientes), provided that the original records were registered within the legal terms. Records concerning late registrations executed without the proper proceedings, may be challenged by all legal means and their validity shall be evaluated by the judges.

Art. 32. In those cases where a record of the Civil Status must be noted in the margin of another record already registered, the notation will be made ex officio, the official of the Civil Status who is the depository of the records within the term of three days. Within the same term the latter shall notify the general procurator of the Republic that he has complied with this obligation, and the latter shall see to it that these notations are made in a uniform manner in the archives of the Central Office of the Civil Status.

Art. 34. The records of the civil status of Dominicans executed abroad shall be valid [in the Republic] if they have been authorized pursuant to the provisions of the laws of the foreign country by the diplomatic and consular agents of the Republic in accordance to what is provided under the laws of the Dominican Republic.

The duplicate registry of the records of the Civil Status carried by these officials shall be forwarded every year through the Secretariat of Foreign Affairs to the Central Office of the Civil Status, which shall preserve them and issue copies of the records therein registered, upon petition of interested parties.

Title IV

Provisions on Marriage and Marriage Acts.

Art. 59.(1) 2/ In the marriage registry, composed of folios of printed forms, the marriages celebrated before the official of the Civil Status shall be registered. In the marriage registry composed of blank folios, there shall be registered:

...

(c) ... final judgments issued in the Republic granting exequatur status to decrees of divorce or of nullity of marriages issued abroad;

(d) decisions and final judgments issued by ecclesiastic tribunals decreeing the dissolution or the nullity of Catholic marriages, together with the final judgment issued by a court of law of the Dominican Republic granting exequatur status to those judgments within the Republic.

2/ Amended by Law No. 4713 of June 21, 1957, G.O., June 22, 1957.

...

Art. 63. (Last Paragraph). At the margin of the corresponding marriage record the following shall be annotated:

(a) the judgments and decisions mentioned under letters (c), (d), and (e) of paragraph (B) [of] section 1 of article 59;

(b) final divorce decrees, provided they have been properly pronounced.

Title V

Concerning the Registration and Pronouncement of Divorce

Art. 64. 3/ In the divorce registry, which is constituted of folios with printed forms, the record of the divorce pronouncement shall be registered pursuant to the provisions of article 17 of Law 1306-bis of June 12, 1937 [sic], under which the spouse who obtained a divorce judgment issued in the last instance or which has become final (except if an appeal on cassation has been filed against it) is under the obligation to appear within 2 months before the official of the Civil Status to have the divorce pronounced and the judgment registered in the Registry of Civil Status, provided the other party is summoned by the bailiff to appear before the official of the Civil status to hear the pronouncement of the divorce.

3/ Id.

Paragraph. The official of the Civil Status shall not pronounce the divorce unless the formalities provided for in article 548 of the Code of Civil Procedure have been complied with and proof that the other spouse was summoned to appear before him or her to hear the pronouncement, as previously provided in this article, has been furnished. The official of the Civil Status who pronounces a divorce without complying with the above-mentioned provisions will be subject to dismissal independently of the civil liabilities he or she may incur.

Art. 65. For the purposes of the preceding article, the provisions of article 18 of Law 1306-bis already cited shall be taken into consideration, pursuant to which the term of 2 months referred to in the previous article shall not start until after the expiration of the term to appeal in those cases where the divorce decree has been issued by the court of first instance. With regard to those [divorce] decrees issued by default for non-appearance of the appellant in appeal proceedings, the term shall be counted after the expiration of the term to oppose the appeal.

Art. 66. 4/ In the registry composed of blank pages, there shall be registered the acts of pronouncement of divorce decrees which, because of their peculiarities, are not fit to be registered in the registry composed of printed forms; also, there shall be transcribed in this registry the divorce decrees issued abroad.

Art. 67. The official of the Civil Status competent to pronounce the divorce decree under the provisions of article 64 of this law is the one of the jurisdiction of the Tribunal that issued the divorce decree. When that jurisdiction has two or more officials of the Civil Status, the one that is

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4/ Id.

competent to pronounce the divorce decree shall be the one in whose demarcation the plaintiff or defendant resides, in the case provided under article 3 of the Law on Divorce No. 1306-bis.

Paragraph. If neither the plaintiff nor defendant has his domicile within the country, the official of the Civil Status who is competent to pronounce the divorce shall be anyone of the jurisdiction of the tribunal that issued the divorce decree.

In case the marriage of the divorced spouses is not registered in the Office of the Civil Status that pronounced the divorce, the registrar shall give immediate notice to the official of the Civil Status where the marriage is registered in order that he [may] execute the corresponding annotation in the margin of the marriage registration.

APPENDIX III

Excerpts

CIVIL CODE*

...

Art. 2. The law provides for the future; it does not have retroactive effects.

Art. 3. ... The laws concerning the civil status and legal capacity of persons are mandatory to all Dominicans, even if they reside abroad.

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*Codigo Civil de la Republica Dominicana (ed. of., Santo Domingo, Impresora ONAP, 1984).